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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

BRIAN LIVESAY.

Plaintiff.

V.

## BBVA COMPASS BANCSHARES, INC.,

**Defendant.**

CASE NO. 15cv2308 DMS (AGS)

**ORDER (1) GRANTING  
PLAINTIFF'S MOTION FOR  
LEAVE TO FILE A THIRD  
AMENDED COMPLAINT AND (2)  
DENYING AS MOOT  
DEFENDANT'S MOTION TO  
DISMISS**

16 This case comes before the Court on Defendant's motion to dismiss and  
17 Plaintiff's motion for leave to file a Third Amended Complaint. Both motions are fully  
18 briefed and ready for disposition. For the reasons set out below, Plaintiff's motion is  
19 granted and Defendant's motion is denied as moot.

20       Federal Rule of Civil Procedure 15 provides that leave to amend a party's  
21 pleading "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). In  
22 accordance with this Rule, the Supreme Court has stated,

in the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, *etc.* -- the leave sought should, as the rules require, be "freely given."

27 *Foman v. Davis*, 371 U.S. 178, 182 (1962). Of these factors, the Ninth Circuit has  
28 stated “it is the consideration of prejudice to the opposing party that carries the greatest

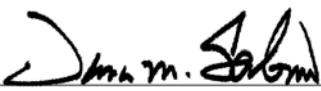
1 weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).  
2 The party opposing the amendment bears the burden of showing prejudice. *DCD*  
3 *Programs, Ltd. v. Leighton*, 833 F.2d 183, 186-87 (9<sup>th</sup> Cir. 1987). Absent prejudice, or  
4 a strong showing of any of the remaining *Foman* factors, there exists a presumption  
5 under Rule 15(a) in favor of granting leave to amend. *Eminence Capital*, 316 F.3d at  
6 1052.

7 Here, Defendant does not assert that it would be prejudiced if Plaintiff is granted  
8 leave to file the Third Amended Complaint. Rather, the only argument it raises is that  
9 the proposed amendment would be futile. The Court disagrees.

10 In a recent order, this Court addressed the standing issues Defendant raises in its  
11 motion to dismiss. (*See Garcia v. Caine & Weiner Co.*, Case No. 16cv0850, Docket  
12 No. 21.) Pursuant to that Order, allowing Plaintiff to file the Proposed Third Amended  
13 Complaint would not be futile. Indeed, the amendment would address the alleged  
14 standing deficiencies. Absent a showing that any of the other factors warrant denial of  
15 Plaintiff’s motion for leave to amend, that motion is granted. In light of that ruling,  
16 Defendant’s motion to dismiss Plaintiff’s Second Amended Complaint is denied as  
17 moot.

18 **IT IS SO ORDERED.**

19 DATED: November 21, 2016

20   
21 HON. DANA M. SABRAW  
22 United States District Judge  
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